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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178927
Party	Defendant The Coca-Cola Company
Correspondence Address	Bruce W. Baber King & Spaulding, LLP 1180 Peachtree Street Atlanta, GA 30305 UNITED STATES BBaber@KSLAW.com
Submission	Other Motions/Papers
Filer's Name	Bruce W. Baber
Filer's e-mail	BBaber@kslaw.com, EBrown@kslaw.com
Signature	/Bruce W. Baber/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ROYAL CROWN COMPANY, INC.,)	
	)	<u>Consolidated Proceedings:</u>
)	
Opposer,	)	OPPOSITION NO. 91178927
	)	OPPOSITION NO. 91180771
v.	)	OPPOSITION NO. 91180772
	)	OPPOSITION NO. 91183482
	)	OPPOSITION NO. 91185755
THE COCA-COLA COMPANY,	)	OPPOSITION NO. 91186579
	)	OPPOSITION NO. 91189847
	)	OPPOSITION NO. 91190658
Applicant.)	

– and –

THE COCA-COLA COMPANY,)	
)	
Opposer,)	
)	
v.	)	OPPOSITION NO. 91184434
)	
ROYAL CROWN COMPANY, INC.,)	
)	
Applicant.)	

ANSWER OF APPLICANT THE COCA-COLA COMPANY TO
ROYAL CROWN'S AMENDED CONSOLIDATED NOTICE OF OPPOSITION

NOW COMES THE COCA-COLA COMPANY ("TCCC"), the owner of and
applicant named in the following applications:

Serial No. 78/580,598 for the mark COCA-COLA ZERO, filed on
March 4, 2005 and published for opposition on April 17, 2007;

Serial No. 78/664,176 for the mark COKE ZERO, filed on July 6,
2005 and published for opposition on July 24, 2007;

Serial No. 78/316,078 for the mark SPRITE ZERO, filed on October 20, 2003 and published for opposition on October 23, 2007;

Serial No. 77/176,279 for the mark COCA-COLA CHERRY ZERO, filed on May 9, 2007 and published for opposition on March 11, 2008;

Serial No. 77/176,127 for the mark CHERRY COKE ZERO, filed on May 9, 2007 and published for opposition on March 11, 2008;

Serial No. 77/176,108 for the mark COCA-COLA VANILLA ZERO, filed on May 9, 2007 and published for opposition on March 11, 2008;

Serial No. 77/175,127 for the mark CHERRY COCA-COLA ZERO, filed on May 8, 2007 and published for opposition on March 11, 2008;

Serial No. 77/175,066 for the mark COKE CHERRY ZERO, filed on May 8, 2007 and published for opposition on March 11, 2008;

Serial No. 77,097,644 for the mark PIBB ZERO, filed on February 2, 2007 and published for opposition on March 18, 2008;

Serial No. 76,674,382 for the mark COKE ZERO ENERGY, filed on March 22, 2007 and published for opposition on April 29, 2008;

Serial No. 76/674,383 for the mark COKE ZERO BOLD, filed on March 22, 2007 and published for opposition on April 29, 2008;

Serial No. 77/176,099 for the mark VANILLA COKE ZERO, filed on May 9, 2007 and published for opposition on April 15, 2008;

Serial No. 77,257,653 for the mark VANILLA COCA-COLA ZERO, filed on August 17, 2007 and published for opposition on May 27, 2008;

Serial No. 77/309,752 for the mark POWERADE ZERO, filed on October 22, 2007 and published for opposition on September 9, 2008;

Serial No. 78/620,677 for the mark FANTA ZERO, filed on May 2, 2005 and published for opposition on June 10, 2008;

Serial No. 77/413,618 for the mark FULL THROTTLE ZERO, filed on March 5, 2008 and published for opposition on December 23, 2008;
and

Serial No. 78/698,990 for the mark VAULT ZERO, filed on August 24, 2005 and published for opposition on February 17, 2009 (the “Applications”),

all for beverages, soft drinks, sports drinks, energy drinks, syrups and/or concentrates in International Class 32, and, in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice and by and through its undersigned counsel, files this answer to the Amended Consolidated Notice Of Opposition (the “Amended Opposition”) filed by ROYAL CROWN COMPANY, INC. (“Royal Crown”) on June 22, 2009, and in support thereof respectfully shows as follows:

ANSWER TO AMENDED OPPOSITION

TCCC responds to the Amended Opposition filed by Royal Crown as follows:

In response to the introductory unnumbered paragraph of the Amended Opposition, TCCC admits that the mark COCA-COLA ZERO is the subject of application Serial No. 78/580,598, that the mark COKE ZERO is the subject of application Serial No. 78/664,176, that the mark SPRITE ZERO is the subject of application Serial No. 78/316,078, that the mark COCA-COLA CHERRY ZERO is the

subject of application Serial No. 77/176,279, that the mark CHERRY COKE ZERO is the subject of application Serial No. 77/176,127, that the mark COCA-COLA VANILLA ZERO is the subject of application Serial No. 77/176,108, that the mark CHERRY COCA-COLA ZERO is the subject of application Serial No. 77/175,127, that the mark COKE CHERRY ZERO is the subject of application Serial No. 77/175,066, that the mark PIBB ZERO is the subject of application Serial No. 77/097,644, that the mark COKE ZERO ENERGY is the subject of application Serial No. 76/674,382, that the mark COKE ZERO BOLD is the subject of application Serial No. 76/674,383, that the mark VANILLA COKE ZERO is the subject of application Serial No. 77/176,099, that the mark VANILLA COCA-COLA ZERO is the subject of application Serial No. 77/257,653, that the mark POWERADE ZERO is the subject of application Serial No. 77/309,752, that the mark FANTA ZERO is the subject of application Serial No. 78/620,677, that the mark FULL THROTTLE ZERO is the subject of application Serial No. 77/413,618, that the mark VAULT ZERO is the subject of application Serial No. 78/698,990, and that Royal Crown has opposed the Applications; denies that Royal Crown will be damaged by the issuance of registrations for TCCC's COCA-COLA ZERO, COKE ZERO, SPRITE ZERO, COCA-COLA CHERRY ZERO, CHERRY COKE ZERO, COCA-COLA VANILLA ZERO, CHERRY COCA-COLA ZERO, COKE CHERRY ZERO, PIBB ZERO, COKE ZERO ENERGY, COKE ZERO BOLD, VANILLA COKE ZERO, VANILLA COCA-COLA ZERO, POWERADE ZERO, FANTA ZERO, FULL THROTTLE ZERO and VAULT ZERO marks (collectively, the "TCCC Marks"); and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the first, unnumbered paragraph.

TCCC responds to the separately-numbered paragraphs of the Amended Opposition as follows:

1. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Opposition.

2. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Opposition.

3. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Amended Opposition.

4. In response to the allegations of paragraph 4 of the Amended Opposition, TCCC denies that the term ZERO is merely descriptive of characteristics of Royal Crown's diet beverages, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4.

5. In response to the allegations of paragraph 5 of the Amended Opposition, TCCC admits that records of the United States Patent and Trademark Office ("USPTO") reflect that Royal Crown apparently filed, on February 28, 2005, an application to register DIET RITE PURE ZERO for "soft drinks and syrups used in the preparation thereof" in International Class 32, that the application was based on a bona fide intent to use, and that the application was assigned serial number 78/576,257; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 5.

6. In response to the allegations of paragraph 6 of the Amended Opposition, TCCC admits that records of the USPTO reflect that a non-final Office Action was issued with respect to application Serial No. 78/576,257 on August 9, 2005 requiring

that Royal Crown disclaim the term ZERO; denies that ZERO is merely descriptive of one or more features of Royal Crown's product; and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 6.

7. In response to the allegations of paragraph 7 of the Amended Opposition, TCCC admits that records of the USPTO reflect that Royal Crown apparently filed, on March 7, 2005, an application to register PURE ZERO for "soft drinks and syrups and concentrates used in the preparation thereof" in International Class 32, that the application was based on an intent to use, and that the application was assigned serial number 78/581,917; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7.

8. In response to the allegations of paragraph 8 of the Amended Opposition, TCCC admits that records of the USPTO reflect that a non-final Office Action was issued with respect to application Serial No. 78/581,917 on August 9, 2005 requiring that Royal Crown disclaim the term ZERO; denies that ZERO merely describes one or more features of Royal Crown's product; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 8.

9. In response to the allegations of paragraph 9 of the Amended Opposition, TCCC admits that records of the USPTO reflect that Royal Crown has agreed to disclaim ZERO in both application Serial No. 78/576,257 and application Serial No. 78/581,917, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9.

10. In response to the allegations of paragraph 10 of the Amended Opposition, TCCC denies that the term ZERO is commonly used in the trade and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10.

11. In response to the allegations of paragraph 11 of the Amended Opposition, TCCC admits that it is incorporated in the state of Delaware and that it is located at and doing business at One Coca-Cola Plaza, N.W., Atlanta, Georgia 30313.

12. In response to the allegations of paragraphs 12 (a) through (q) of the Amended Opposition, TCCC admits that it filed with the USPTO on the dates indicated the following applications for the marks indicated for the beverage products indicated:

(a) an application to register COCA-COLA ZERO for “beverages, namely soft drinks; syrups and concentrates for making the same” in International Class 32 on March 4, 2005 that was assigned serial number 78/580,598;

(b) an application to register COKE ZERO for “beverages, namely soft drinks; syrups and concentrates for the making of the same” in International Class 32 on July 6, 2005 that was assigned serial number 78/664,176;

(c) an application to register SPRITE ZERO for “beverages, namely carbonated soft drinks; syrups, concentrates and powders for making same” in International Class 32 on October 20, 2003 that was assigned serial number 78/316,078;

(d) an application to register COCA-COLA CHERRY ZERO for “non-alcoholic beverages, namely soft drinks; syrups and concentrates for making non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 9, 2007 that was assigned serial number 77/176,279;

(e) an application to register CHERRY COKE ZERO for “non-alcoholic beverages, namely, soft drinks; concentrates for making non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 9, 2007 that was assigned serial number 77/176,127;

(f) an application to register COCA-COLA VANILLA ZERO for “non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 9, 2007 that was assigned serial number 77/176,108;

(g) an application to register CHERRY COCA-COLA ZERO for “non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 8, 2007 that was assigned serial number 77/175,127;

(h) an application to register COKE CHERRY ZERO for “non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 8, 2007 that was assigned serial number 77/175,066;

(i) an application to register PIBB ZERO for “non-alcoholic beverages, namely soft drinks and concentrates for the making of the same” in International Class 32 on February 2, 2007 that was assigned serial number 77/097,644;

(j) an application to register COKE ZERO ENERGY for “non-alcoholic beverages, namely, soft drinks and energy drinks; syrups and

concentrates for making soft drinks and energy drinks” in International Class 32 on March 22, 2007 that was assigned serial number 76/674,382;

(k) an application to register COKE ZERO BOLD for “non-alcoholic beverages, namely, soft drinks and energy drinks; syrups and concentrates for making soft drinks and energy drinks” in International Class 32 on March 22, 2007 that was assigned serial number 76/674,383;

(l) an application to register VANILLA COKE ZERO for “non-alcoholic beverages, namely, soft drinks; syrups and concentrates for making non-alcoholic beverages, namely, soft drinks” in International Class 32 on May 9, 2007 that was assigned serial number 77/176,099;

(m) an application to register VANILLA COCA-COLA ZERO for “non-alcoholic beverages, namely, soft drinks” in International Class 32 on August 17, 2007 that was assigned serial number 77/257,653;

(n) an application to register POWERADE ZERO for “non-alcoholic beverages, namely, sports drinks” in International Class 32 on October 22, 2007 that was assigned serial number 77/309,752;

(o) an application to register FANTA ZERO for “beverages, namely, soft drinks, syrups and concentrates for the making of the same” in International Class 32 on May 2, 2005 that was assigned serial number 78/620,677;

(p) an application to register FULL THROTTLE ZERO for “non-alcoholic beverages, namely, energy drinks” in International Class 32 on March 5, 2008 that was assigned serial number 77/413,618; and

(q) an application to register VAULT ZERO for “non-alcoholic beverages, namely, soft drinks and energy drinks; syrups and concentrates for making soft drinks and energy drinks” in International Class 32 on August 24, 2005 that was assigned serial number 78/698,990;

admits that all of the marks that are the subject of the applications identified above include ZERO; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 12 (a) through (q).

13. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Opposition.

14. In response to the allegations of paragraph 14 of the Amended Opposition, TCCC admits that the USPTO Examining Attorneys to whom each of the Applications was assigned inquired as to the descriptiveness of ZERO; denies that ZERO is merely descriptive of a feature of TCCC’s goods; and denies the remaining allegations of paragraph 14.

15. In response to the allegations of paragraph 15 of the Amended Opposition, TCCC admits that it proffered to the USPTO evidence regarding the acquired distinctiveness of ZERO under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), for each of the Applications; states that each of TCCC’s submissions to the USPTO speaks for themselves as to their contents; admits that the USPTO accepted TCCC’s evidence with respect to the acquired distinctiveness of ZERO and approved the Applications for publication; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15.

16. TCCC denies the allegations of paragraph 16 of the Amended Opposition.

17. In response to the allegations of paragraph 17 of the Amended Opposition, TCCC admits that it filed an Opposition against Royal Crown's applications to register DIET RITE PURE ZERO and PURE ZERO, and denies the remaining allegations of paragraph 17.

ALLEGED FIRST CLAIM FOR RELIEF UNDER SECTION 2(e)

18. In response to the allegations of paragraph 18 of the Amended Opposition, TCCC hereby repeats and realleges its responses to paragraphs 1 through 17 above as if fully set forth herein.

19. TCCC denies the allegations of paragraph 19 of the Amended Opposition.

20. In response to the allegations of paragraph 20 of the Amended Opposition, TCCC admits that it submitted evidence to the USPTO showing that ZERO has acquired distinctiveness when used as an element of TCCC's Marks; admits that the evidence refers to certain attributes of the products offered under the TCCC Marks; denies specifically that ZERO as used by TCCC as an element of TCCC's Marks is merely descriptive; and denies the remaining allegations of paragraph 20.

21. TCCC denies the allegations of paragraph 21 of the Amended Opposition.

22. TCCC denies the allegations of paragraph 22 of the Amended Opposition.

ALLEGED SECOND CLAIM FOR RELIEF
UNDER SECTION 2 AND/OR SECTION 2(e)

23. In response to the allegations of paragraph 23 of the Amended Opposition, TCCC hereby repeats and realleges its responses to paragraphs 1 through 22 above as if fully set forth herein.

24. In response to the allegations of paragraph 24 of the Amended Opposition, TCCC denies that ZERO or the “number zero (0)” names distinctive characteristics and/or the most important attributes of beverage products for which the TCCC Marks are sought to be registered and for which the TCCC Marks are or are intended to be used; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24.

25. TCCC denies the allegations of paragraph 25 of the Amended Opposition.

26. In response to the allegations of paragraph 26 of the Amended Opposition, TCCC states that Sections 2 and 2(e) of the Lanham Act speak for themselves as to their contents; denies that ZERO as used in the TCCC Marks is a generic term and that registration of the TCCC’s Marks without a disclaimer is contrary to Sections 2 or 2(e) of the Lanham Act; and denies the remaining allegations of paragraph 26.

27. In response to the allegations of paragraph 27 of the Amended Opposition, TCCC specifically denies that ZERO is generic and unregistrable, and denies the remaining allegations of paragraph 27.

28. TCCC denies the allegations of paragraph 28 of the Amended Opposition.

29. TCCC denies the allegations of paragraph 29 of the Amended Opposition.

In response to the unnumbered paragraph that follows paragraph 29 of the Amended Opposition, TCCC denies that Royal Crown’s opposition should be sustained, and denies that a disclaimer of the term ZERO should be required.

FIRST DEFENSE

Royal Crown has not pleaded any law or facts that justify rejection of the Applications, Royal Crown's opposition to the Applications, or a refusal to register the TCCC Marks.

SECOND DEFENSE

TCCC has engaged in extended and extensive commercial activities that have resulted in the acquisition of distinctiveness for ZERO as an element of trademarks for beverage products manufactured by TCCC, and in the recognition by consumers and the beverage industry of the term ZERO as a source-identifying element for TCCC, and TCCC is therefore entitled to registration of the marks COCA-COLA ZERO, COKE ZERO, SPRITE ZERO, COCA-COLA CHERRY ZERO, CHERRY COKE ZERO, COCA-COLA VANILLA ZERO, CHERRY COCA-COLA ZERO, COKE CHERRY ZERO, PIBB ZERO, COKE ZERO ENERGY, COKE ZERO BOLD, VANILLA COKE ZERO, VANILLA COCA-COLA ZERO, POWERADE ZERO, FANTA ZERO, FULL THROTTLE ZERO and VAULT ZERO without a disclaimer of the term ZERO.

THIRD DEFENSE

Royal Crown's claim that ZERO is a generic term is barred, in whole or in part, by estoppel.

TCCC denies each and every allegation of the Amended Opposition not specifically admitted or otherwise responded to herein. TCCC further denies that applications Serial Nos. 78/580,598, 78/664,176, 78/316,078, 77/176,279, 77/176,127, 77/176,108, 77/175,127, 77/175,066, 77/097,644, 76/674,382, 76/674,383, 77/176,099,

77/257,653, 77/309,752, 78/620,677, 77/413,618 and 78/698,990 should be rejected for any reason and that TCCC should be required to disclaim the term ZERO in connection therewith; denies that Royal Crown has asserted any basis in law or in fact sufficient to sustain Royal Crown's opposition to the registration of the TCCC Marks for the goods claimed in the Applications; denies that the Amended Opposition should be sustained in favor of Royal Crown; and denies that Royal Crown is entitled to any relief whatsoever against TCCC.

WHEREFORE, having fully answered the Amended Opposition, The Coca-Cola Company respectfully prays:

- (i) that the Amended Opposition be dismissed and/or denied in its entirety;
- (ii) that judgment be entered in favor of TCCC on the Amended Opposition and each and every claim and count thereof;
- (iii) that registrations be issued to TCCC for the marks COCA-COLA ZERO, as applied for in application Serial No. 78/580,598; COKE ZERO, as applied for in application Serial No. 78/664,176; SPRITE ZERO, as applied for in application Serial No. 78/316,078; COCA-COLA CHERRY ZERO, as applied for in application Serial No. 77/176,279; CHERRY COKE ZERO, as applied for in application Serial No. 77/176,127; COCA-COLA VANILLA ZERO, as applied for in application Serial No. 77/176,108; CHERRY COCA-COLA ZERO, as applied for in application Serial No. 77/175,127; COKE CHERRY ZERO, as applied for in application Serial No. 77/175,066; PIBB ZERO, as applied for in application Serial No. 77/097,644; COKE ZERO ENERGY, as applied for in application


Serial No. 76/674,382; COKE ZERO BOLD, as applied for in application Serial No. 76/674,383; VANILLA COKE ZERO, as applied for in application Serial No. 77/176,099; VANILLA COCA-COLA ZERO, as applied for in application Serial No. 77/257,653; POWERADE ZERO, as applied for in application Serial No. 77/309,752; FANTA ZERO, as applied for in application Serial No. 78/620,677; FULL THROTTLE ZERO, as applied for in application Serial No. 77/413,618; and VAULT ZERO, as applied for in application Serial No. 78/698,990, all without a disclaimer of ZERO; and

(iv) that TCCC be granted such other and further relief as the Board deems just and proper.

This 13th day of July, 2009.

Respectfully submitted,

KING & SPALDING LLP



Bruce W. Baber
Emily B. Brown

1180 Peachtree Street
Atlanta, Georgia 30305
Telephone: 404-572-4600
Facsimile: 404-572-5134

Attorneys for Applicant and Opposer
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Answer Of Applicant The Coca-Cola Company To Royal Crown's Amended Consolidated Notice Of Opposition upon Royal Crown, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Royal Crown's counsel of record as follows:

Ms. Barbara A. Solomon
Ms. Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

This 13th day of July, 2009.



Emily B. Brown